IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.613 OF 2007

Baburao Nivrutti Jagtap,
since deceased through his L.Rs
1A. Matabai w/o Baburao Jagtap
and ors. .. Appellants.
(Defendants)

Vs

Shri Dattu Ganapati Awalekar
.. Respondent
(Orig.Plff)

Mr Umesh Mankapure, for the appellants.
Mr Anilkumar K. Patil, for the respondent.

CORAM : D.B.BHOSALE,J.
DATED : 03.10.2007

P.C.:

1. Heard the learned counsel for the parties.

2. By this second appeal, the appellants have impugned the judgment of the first appellate court dated 16.12.2005, by which an appeal filed by the respondent-plaintiff was allowed and the judgment and decree passed by the trial Court in Regular Civil Suit No.27 of 1985 filed by the respondent-plaintiff came to be dismissed. The suit was filed for declaration and injunction. The claim of the plaintiff was based upon a Will executed on 25.6.1984 by Tanubai, the wife of Kundalik Jagtap, in respect of the suit property. By this Will, the entire property was willed out to the plaintiff. As against this, the defendants claim right in the suit property on the basis of a Will dated 10.8.1965 allegedly executed by Kundalik Vithu Jagtap. The only contention urged by Mr.Mankapure, learned counsel for the appellants, is that the suspicious

circumstances which were taken into consideration by the trial court while dismissing the suit were not considered by the appellate court at all and the appellate court has wrongly held that the Will executed by Tanubai in favour of the plaintiff is legal and valid. I perused the judgment of the appellate court and more particularly paragraphs 11 to 18 thereof. It is clear that to prove the Will the plaintiff had examined a Scribe and the attesting witness who have fully supported the execution of Will. Their evidence reveals that even the appellant was present when the Will was executed by Tanubai. The suspicious circumstances were also taken note of by the appellate court and has rightly observed in paragraphs 20 to 23 that merely because the names of scribe and the attesting witness were written in pencil that, by itself, is not sufficient to discard the Will and that there is nothing unusual and improper in writing the names in pencil. The names were written only for the purpose of identification of signatures of the attesting witness. All the witnesses examined by the plaintiff have clearly supported the case of the plaintiff and the appellants could not elicit anything in the cross-examination of the witnesses. Findings are entirely based on the evidence on record and I find no reason to interfere with the same in the present appeal. Hence, the appeal is dismissed.

(D.B.BHOSALE,J.)